Central Transport, Inc., Big John, Inc., and Central Cartage Company, Joint Employers *and* Chauffeurs, Teamsters & Helpers Local Union No. 414, a/w International Brotherhood of Teamsters, AFL–CIO.[1] Cases 25–CA–20173–1, 25–CA–20173–2, and 25–CA–20173–3

January 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On July 11, 1991, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondents filed exceptions and supporting briefs, and the General Counsel filed cross-exceptions and a supporting brief, to which the Respondents filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings as modified, and conclusions and to adopt the recommended Order as modified.[2]

1. Central Transport, Inc. and Central Cartage Company, a single employer (Central), excepts on due process grounds to the judge's finding that, as joint employer with Big John, Inc. (Big John), it had a duty to bargain with the Union and that it was liable for unlawfully refusing to do so. As Central asserts, only Big John was named as the employer in the representation petition and the certification of representative. Central argues that it therefore cannot be liable because it never received prior notice of its duty to bargain. We find no merit to this contention. The parties having stipulated that Central is a joint employer with Big John, it follows under well established Board law that Central's bargaining duty is equal to that of Big John's, notwithstanding that Central was not a participant in the representation proceedings. *American Air Filter Co.*, 258 NLRB 49, 53 (1981). See *U.S. Pipe & Foundry Co.*, 247 NLRB 139, 140, 142 (1980).

We do not find persuasive Central's contention that this holding is inconsistent with *Alaska Roughnecks & Drillers Assn. v. NLRB*, 555 F.2d 732 (9th Cir. 1977), cert. denied 434 U.S. 1069 (1978). There, Mobil operated an oil drilling platform and contracted with Santa Fe to perform its drilling and production operations. The union petitioned for an election for a unit of employees assigned to the Mobil platform, naming only Santa Fe as the employer. While negotiations between Santa Fe and the union were underway, Mobil terminated its contract with Santa Fe. The union then requested that Mobil bargain. The Board found that Mobil was a joint employer and had a duty to bargain over the decision to terminate the contract and its effects. The court reversed on due process grounds, finding that Mobil could not be found to have unlawfully refused to bargain because Mobil was not informed of its alleged duty to bargain as either a successor or joint employer and was not given an opportunity to participate in the certification proceedings. The court expressly indicated that the result might have been different had the union demanded recognition of Mobil on the basis of a card majority, had Mobil intervened in the subcontractor's dispute with the union, or had it been approached by the union to bargain before Mobil terminated its contract with Santa Fe. 555 F.2d at 736–737.

In the instant case, by contrast, the Union demanded that Central recognize the Union and bargain on the basis of a card majority,[3] Central participated at least indirectly in the contract negotiations,[4] and Central intervened directly in the labor dispute of Big John by terminating its contract and relocating operations because of the unionization of its joint employees. Accordingly, we find unavailing Central's argument that this case falls within the court's holding in *Alaska Roughnecks* and the related contention that it cannot be held liable as joint employer with Big John for refusing to bargain with the Union.

2. We agree with the judge that the Respondents' decision to terminate their contract and relocate the operations at the Roanoke facility was for the discriminatory purpose of retaliating against employees for selecting the Union as their representative in violation of Section 8(a)(3) and (1) of the Act. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).[5] Because the

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] We shall modify the recommended Order to provide for the removal from the discriminatees' personnel files any references to their unlawful layoffs. We shall also conform the notice with the judge's recommended Order as modified.

[3] The record shows that prior to the election, Union Representative Hinton wrote to Central Supervisor Ray Carr, who was in charge of the Roanoke facility, and requested recognition and bargaining, based on the Union's receipt of authorization cards from a majority of the employees. Within a week of receiving the letter, Carr called Hinton and told him that if the Union did represent a majority of the employees, he should contact and bargain with Central Representative Henry Bechard. Hinton requested bargaining with Bechard and was refused.

[4] Big John, during negotiations, made it clear to the Union that all proposals had to be cleared with Central prior to any agreement. Indeed, Big John President John Anger reported the Union's bargaining demands to Central after its first negotiation session, and relayed Central's response to those demands to the Union.

[5] We disagree with the Respondents' contention that the Union engaged in bad-faith bargaining by taking an inflexible stance at the bargaining table. Rather, the evidence indicates that Union Business Agent Michael Hinton told Big John President John Anger that each and every item in the Union's initial blue book proposal was nego-

decision was motivated by antiunion animus, we conclude that the Respondents were not exempt from their obligation to bargain with the Union over the decision under *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 687, 688 (1981). Discrimination on the basis of antiunion animus cannot serve as a lawful entrepreneurial decision. *Strawsine Mfg. Co.*, 280 NLRB 553 (1986); *Hydro Logistics, Inc.*, 287 NLRB 602 (1987), enfd. sub nom. *NLRB v. Wizard Method Inc.*, 897 F.2d 1233 (2d Cir. 1990).[6] We therefore agree with the judge that the Respondents violated Section 8(a)(5) and (1) of the Act by failing to bargain over the decision and effects.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below and orders that the Respondents, Central Transport, Inc. and Central Cartage Co., Sterling Heights, Michigan, and Big John, Inc., Kokomo, Indiana, joint employers, their officers, agents, successors, and assigns, shall take the action set forth in the Order, as modified.

1. Substitute the following for paragraph 2(b).

''(b) Offer John Melton, Robert Scott Bell, and Garry Murdock Sr., immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and remove from their files any references to the employees' unlawful layoffs; and notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.''

2. Substitute the attached notice for that of the administrative law judge.

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tiable. Further, we note that other contracts negotiated between the local union and other employers contained lower health and welfare and pension rates than those contained in the blue book.

[6] In their exceptions, the Respondents assert that the Union waived its right to bargain over the decision by failing to request bargaining. We find no merit to this contention. Since the Respondents' decision was based on antiunion animus, it would have been futile for the Union to attempt to bargain meaningfully over the decision. *Smyth Mfg. Co.*, 247 NLRB 1139, 1171 (1980).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate employees with regard to their union activity or the union activity of others.

WE WILL NOT threaten employees with plant closure if they select a union to represent them.

WE WILL NOT lay off employees and close facilities because the employees engage in protected concerted activity such as selecting a union to represent them.

WE WILL NOT fail to bargain in good faith with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under the National Labor Relations Act.

WE WILL restore matters to the status quo ante by reopening the maintenance operation/safety lane at the Roanoke, Indiana terminal, which we closed on September 1, 1989.

WE WILL offer John Melton, Robert Scott Bell, and Garry Murdock Sr., immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges, and remove from our files any references to their unlawful layoffs; and notify the employees that this has been done and that the layoffs will not be used against them in any way.

WE WILL, on request, bargain in good faith concerning wages, hours and other terms and conditions of employment with the Union selected by our employees to represent them.

WE WILL make John Melton, Robert Scott Bell, and Garry Murdock Sr., whole for any loss of pay or benefits they suffered because of the discrimination against them, plus interest.

CENTRAL TRANSPORT, INC., BIG JOHN, INC., AND CENTRAL CARTAGE CO.

John N. Petrison, Esq., for the General Counsel.
Timothy K. Carroll, Esq., of Detroit, Michigan, for the Respondents Central Transport, Inc. and Central Cartage Company.
James H. Hanson, Esq., of Indianapolis, Indiana, for the Respondent Big John, Inc.
Howard Michael Hinton, Business Agent, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On October 2, 1989, October 19, 1989, and May 8, 1990, a charge, a first amended charge, and a second amended charge were filed by Teamsters 414 (the Union), against Central Transport, Inc. in Case CA–20173–1.

On October 2, 1989, October 19, 1989, and May 8, 1990 a charge, a first amended charge, and a second amended charge were filed by the Union against Big John, Inc., in Case 25–CA–20173–2.

On May 8, 1990, a charge was filed by the Union against Central Cartage Company in Case 25–CA–20173–3.

On June 29, 1990, the National Labor Relations Board, by the Regional Director for Region 25, issued a consolidated complaint.

It is alleged in the consolidated complaint, which was tried before me in Kokomo, Indiana, on March 4, 5, and 6, 1991, that Central Transport and Central Cartage are a single employer, and that Central Transport and Central Cartage, a single employer (Central) is a joint employer with Big John, and that these three entities violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act), by engaging in unlawful interrogation, threats, layoffs, and by failing to bargain in good faith with the Union. In its answer Central Transport and Central Cartage denied it violated the Act in any way as did Big John in its answer.

Upon the entire record in the case, to include posthearing briefs timely filed by the General Counsel, counsel for Central, and counsel for Big John, and upon my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material Central Transport and Central Cartage have been corporations duly organized under, and existing by virtue of, the laws of the State of Michigan.

At all times material Big John has been a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana.

Central Transport, Central Cartage, and Big John admit, and I find, that they are, and have been at all time material, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters Local 414 (the Union) is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Overview*

Big John is a personnel leasing corporation. It leases employees to Central. In this case we are concerned only with Big John's lease of employees to work as mechanics at a garage (terminal) in Roanoke, Indiana, which is near Ft. Wayne, Indiana.

Central Transport is engaged in the interstate transportation of freight as is Central Cartage. The basic difference between Central Transport and Central Cartage is that Central Transport moves freight between cities and over great distances whereas Central Cartage moves freight from the terminal, where it is delivered by Central Transport, to destinations within 60 miles or so of the terminal. Central Transport and Central Cartage are both subsidiaries of Centra Inc. The mechanics leased by Central from Big John to work at the Roanoke, Indiana terminal did maintenance work on Central Cartage tractors and operated a safety lane or check lane for Central Transport tractors and trailers.

For the purposes of this litigation Central Transport and Central Cartage (Central) are stipulated by the parties to be a single employer and Central is stipulated by the parties to be a joint employer with Big John.

Central has many terminals. The one in Roanoke, Indiana, is just one of them. In early 1988 Central decided to beef up its Roanoke terminal putting in a maintenance operation/safety lane as described above and hired mechanics.

Ray Carr, an admitted statutory supervisor of Central, hired the mechanics at the Roanoke, Indiana terminal. It was Ray Carr who supervised the mechanics in their job. The mechanics' paychecks were received, however, from Big John. The arrangement between Central and Big John was that Big John paid the mechanics, withheld taxes, etc., and passed on all costs of the personnel to Central who reimbursed Big John in toto and added a fixed percentage of whatever that amount was as Big John's service fee.[1]

When Robert Scott Bell, Garry Murdock Sr., and Joseph Lineman were hired in late 1987 and early 1988 by Ray Carr, Carr told each of them separately that the shop was nonunion and if a union was brought in the shop would close. I found Bell, Murdock, and Lineman to be credible witnesses.

Ray Carr admits he told the employees he hired that the shop was nonunion but denies he told the employees when he hired them that if the shop went union it would close.

Carr's statements to Bell, Murdock, and Lineman, are not alleged as violations of the Act and fall outside the 10(b) period in any event. However, they demonstrate antiunion animus and are considered by me in judging the motivation of Central in closing the facility in September 1989 after the Union was voted in by the employees.

In mid-1988 Joseph Lineman was transferred to a one-man shop in Indianapolis, Indiana. In April 1989 one of the mechanics quit and was not replaced. In the spring of 1989, therefore, there were five mechanics in the Roanoke garage. They were Jerry Burger, Duane Holmquest, Robert Scott Bell, John Melton, and Garry Murdock Sr.

In April 1989, three of the five mechanics signed union authorization cards.

They were Robert Scott Bell, John Melton, and Garry Murdock Sr. The Union sent a letter to Ray Carr at Big John advising Carr that the Union represented a majority of the employees and demanding recognition.

[1] The service fee was 4 percent of costs up to $1 million in a year and 6 percent of the amount above $1 million in a year.

B. *The 8(a)(1) Interrogation by Statutory Supervisors Ray Carr and Jim Bowen*

Following receipt of the letter from the Union demanding recognition referred to above, Ray Carr, who was the garage supervisor and the immediate supervisor of the mechanics, unlawfully interrogated several employees in violation of Section 8(a)(1) of the Act. Carr asked Bell if he had signed a union authorization card and Bell said no. Carr also called Murdock if he had signed a union authorization card. Murdock said no. Carr claimed he asked the employees if they signed a card because he thought the Union was trying to put one over on him. None of the three persons who signed authorization cards, Bell, Murdock, or Melton, were open union supporters in the sense that they openly professed to management their support for the Union. Hence, Carr's interrogation of them was unlawful. See *Rossmore House*, 269 NLRB 1176 (1984).

Jim Bowen was the terminal manager at the Roanoke facility. He is no longer with Central and did not testify before me. John Melton, one of the employees who signed a union authorization card, credibly testified that Bowen asked him if he had signed an authorization card and, when Melton said no, Bowen asked him who did. On the day of the election, May 19, 1989, Bowen again asked Melton, who was the election observer for the Union, who had voted for the Union. This was unlawful interrogation in violation of Section 8(a)(1) of the Act.

The Union won the election by a vote of 3–2 and was certified on May 30, 1989, as the collective-bargaining representative of the mechanics.

C. *The 8(a)(1) Threats by Statutory Supervisor Ray Carr*

Before the election, which the Union won, Ray Carr told Jerry Burger, who is still with Big John in a garage in Kokomo, Indiana, that if the Union won the election the shop might ''*possibly*'' close. Carr did not say it definitely would close just that it was possible that it might close. This was before the election and is a clearcut threat in violation of Section 8(a)(1) of the Act. See *Norco Products*, 288 NLRB 1416 (1988).

Carr also told Robert Scott Bell before the election that if the Union was voted in the shop would close. Again, a violation of Section 8(a)(1) of the Act even though Carr admits he said that to Bell but only after Bell approached him and asked him man to man what Carr's opinion was. Subsequent to the election Carr told Bell that the shop would close because the employees selected the Union to represent them. These are clearcut threats in violation of Section 8(a)(1) of the Act. Carr claims it was merely his opinion that the shop would close because unions increase costs but Carr was later promoted to regional manager and Carr's father was at the time of the threats a regional manager for Central and Ray Carr was the person who had personally hired the mechanics. Carr's threats were more than mere personal expressions of opinion. Interestingly enough, his threats of shop closure turned into reality.

D. *Failure to Bargain in Good Faith, Closure of Facility, and Layoff of Bell, Murdock, and Melton*

On July 14, 1989, following Board certification of the Union as the collective-bargaining representative of the employees the Union, by Business Manager Michael Hinton, met with John Anger, president of Big John.

Hinton gave a copy to Anger of the then-current uniform Indiana automotive maintenance agreement between the Indiana Conference of Teamsters and the Indiana Motor Carriers Labor Relations Association and the Motor Carriers Labor Advisory Council. This agreement is commonly referred to as the blue book. Hinton told Anger at this first and only face-to-face negotiating session that the Union wanted the pension plan and health and welfare plan under the master agreement (blue book) to be applicable to the mechanics at the Roanoke facility. Hinton told Anger that he could, however, agree to a wage rate lower then that called for in the blue book.

Anger explained to Hinton that he would have to talk to Central since Central would bear the burden of increased costs since Big John was a personnel leasing company which passed costs on to Central. Thereafter, Anger communicated with Dennis Toca, vice president of maintenance for Central Transport. Anger and Toca concluded that the Union's demand would cost Central Transport, the joint employer with Big John, an additional $200 per week per man or $52,000 a year to operate the garage because of the increased pension and health and welfare costs of the plan demanded by the Union. Toca made the decision to close the shop in late August 1989. Anger told Hinton as a fait accompli that the shop would close on September 1, 1989, when Anger read to Hinton Toco's letter to Anger which stated:

> I am in receipt of your letter of August 7, 1989 relative to increases you are seeking for your employees in the Ft. Wayne Shop.
>
> We are experiencing a severe downturn in overall business in both the truckload and LTL areas. Consequently, we are looking to keep costs in line and cut whenever necesary.
>
> Therefore, we cannot agree to your request for $200.00 per week per man. We will be forced to discontinue using Big John Inc. in Ft. Wayne effective September 1, 1989 and will undoubtedly absorb the work in other shops in an effort to keep costs in line.

On September 1, 1989, the shop closed. Toca's letter was obviously the announcement of a fait accompli and not an offer to negotiate or bargain. Employees Robert Scott Bell, Garry Murdock Sr., and John Melton were laidoff. Employee Jerry Burger was transferred to the Kokomo terminal. Employee Duane Holmquest had previously been transferred to Indianapolis to replace employee Joseph Lineman who had quit. See section III, D, below.

After the facility was closed—just like Carr had threatened would happen if a union was brought in by the employees—the Union on September 8, 1989, requested effects bargaining. Big John bypassed the Union entirely and in late October 1989 and February 1990 offered positions to the three laid-off employees in Zion, Illinois, and Warren, Ohio, re-

spectively. No moving costs were offered to the employees who turned down the offers.

It is clear to me that the joint employers—Central and Big John—violated Section 8(a)(1) and (5) by failing to bargain in good faith for a contract and in closing the facility on September 1, 1989, to retaliate against the employees for selecting union representation.

The joint employers simply rejected the first contract proposal made by the Union, closed the facility, and laid off the employees. The duty to bargain in good faith requires more. At a minimum the parties could bargain to impasse at which point the employer could unilaterally implement its last best offer. The joint employers took the position that since they found the original union proposal regarding pension and health and welfare to be too costly that they would simply close the facility, lay off the employees, and have the work previously done by the mechanics at the Roanoke garage done elsewhere. Following the closure of the Roanoke garage operation Central opened the facility in Kokomo where mechanic Jerry Burger went to work. As before, Burger was leased to Central by Big John. Central employs a number of what it calls ''war wagons,'' which is a mechanic's shop on wheels. Central began to route one of its ''war wagons'' through Roanoke to do some of the work the Roanoke mechanics did. In other words, the work done by the mechanics at Roanoke was relocated and done by other employees.

The garage at the Roanoke facility was closed, that is, the maintenance operation/safety lane was shut down and the mechanics laid off solely because the employees chose union representation. The closure was a subject which had to be negotiated with the Union and the failure to negotiate concerning the closure of the facility with the Union was a violation of Section 8(a)(1) and (5) of the Act. See *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). I note that credible evidence at the hearing reflects that the mechanics were busy up to the closing of the shop on September 1, 1989, and, indeed, were working overtime. As the Board noted in its recent decision in *Dubuque Packing Co.*, 303 NLRB 386 (1991), an employer's decision to relocate work is a mandatory subject of bargaining if the relocation of unit work is unaccompanied by a basic change in the nature of employer's operation and labor costs are decisive in the decision to relocate the work.

The joint employers also violated Section 8(a)(1) and (5) by bypassing the Union which had requested effects bargaining and dealing with the laid-off employees directly in October 1989 and February 1990 regarding employment elsewhere.

The layoff of Robert Scott Bell, Garry Murdock Sr., and John Melton was a violation of Section 8(a)(3) of the Act because it was done because the employees selected a union to represent them. Their layoff was accurately predicted by Ray Carr when the garage first become operational.

E. *Layoff of Joseph Lineman*

Joseph Lineman, who at no time was involved in union or other protected concerted activity, was hired as a mechanic in the Roanoke garage by Ray Carr. Several months later, Lineman was voluntarily transferred to the Indianapolis, Indiana terminal.

In May 1989, Lineman told Ray Carr that he was quitting because he wanted to return to the Ft. Wayne area. Carr told him to hold off and he would see if he could transfer Lineman back to the Roanoke terminal which is near Ft. Wayne.

Carr called Dennis Toca, vice president for maintenance for Central. Toca turned down Carr's request to return Lineman to the Roanoke terminal because of the union situation and because he was annoyed that Lineman was ready to quit after Toca had personally gone to bat for Lineman after Lineman had negligently damaged a vehicle at the Indianapolis terminal. Carr told Lineman that because of the union situation Carr could not return Lineman to Roanoke. Lineman, thereafter, on June 9, 1989, voluntarily quit and returned to the Ft. Wayne area.

It is speculation at best to conclude that absent union activity at the Roanoke facility that Lineman would have been reassigned back to the Roanoke garage. I note that one mechanic had quit the Roanoke garage around this time and had not been replaced.

Lineman planned on voluntarily quitting and did voluntarily quit. There was evidence that Lineman had a job lined up in the Ft. Wayne when he first told Carr he was quitting and Carr told him to hold off. By the time Carr told Lineman that he could not reassign Lineman back to Roanoke the job Lineman had lined up in the Ft. Wayne area was gone but Lineman found another job. Lineman was free to continue working at the Indianapolis terminal but freely chose to quit.

Considering all the evidence, I do not find that Lineman's voluntary resignation was the equivalent of a constructive layoff or discharge. Accordingly, the Act was not violated when Lineman chose to voluntary resign on June 9, 1989.

F. *Summary*

What happened in this case is very simple. Central hired mechanics to work in its Roanoke terminal. The mechanics would be employees leased from Big John. A number of the employees were told by Ray Carr, a Central supervisor, who hired them that the shop was nonunion and if a union was brought in the shop would close.

A majority of the mechanics brought a union in and the Union, at its first negotiating session with Big John, presented a proposal with a more costly pension and health and welfare package then currently in place. Big John communicated that proposal to Central who closed the facility, laid off three mechanics, and relocated the work done by them to others, i.e., put a mechanic at its Kokomo terminal, rerouted the ''war wagon,'' a mobile shop, to Roanoke, and employed a safety lane elsewhere in its system.

Precisely what Ray Carr predicted would happen did happen. The employees exercised a federally guaranteed right to select representation by a union and in a few months the facility closed and they were out of work. As joint employers—Central and Big John—had a duty not to retaliate or discriminate against those employees for exercising their rights and they had a duty to bargain in good faith with the Union.

IV. REMEDY

The remedy for the unlawful interrogation and threats is a cease-and-desist order and the posting of an appropriate notice.

The remedy for the closing of the shop in Roanoke and the laying off of John Melton, Robert Scott Bell, and Garry Murdock Sr., since done for antiunion reasons and to retali-

ate against the employees of selecting a union to represent them, is a cease-and-desist order, the posting of a notice, and a make-whole remedy. The make-whole remedy should include an order to restore matters to the status quo ante, i.e, the way they were before the unlawful acts. This mean that Central should reopen the maintenance operation/safety lane at the Roanoke terminal, which terminal at least at the time of the hearing was still owned and occupied by Central. Accordingly, restoring matters to the status quo ante will not be unduly burdensome to Central. See *Lear Siegler, Inc.*, 295 NLRB 857 (1989); *Reece Corp.*, 294 NLRB 448 (1989). Melton, Bell, and Murdock should be reinstated with backpay.

Central, at the hearing and in its brief, refers to the cases of *Alaska Roughnecks & Drillers Assn v. NLRB*, 555 F.2d 732 (9th Cir. 1977) and *International House v. NLRB*, 676 F.2d 906 (2d Cir. 1982). In the instant case there can be no due-process argument as permitted in the aforementioned cases that treating Central and Big John as joint employers would be unfair in some way. Central and Big John were both equally aware of the union organizing effort and what took place during negotiations.

The failure of the joint employers—Central and Big John—to bargain in good faith with the Union can be remedied by an order to bargain in good faith with the Union and the posting of a notice.

CONCLUSIONS OF LAW

1. Central Transport, Inc. Big John, Inc., and Central Cartage Company, Respondents, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Central Transport, Inc., and Central Cartage constitute a single employer and is a joint employer with Big John, Inc.

3. When the Respondents, through Ray Carr and Jim Bowen, unlawfully interrogated employees about their union activity they violated Section 8(a)(1) of the Act.

4. When the Respondents, through Ray Carr, threatened plant closure if the employees selected a union to represent them they violated Section 8(a)(1) of the Act.

5. When the Respondents closed the maintenance operation/safety lane at the Roanoke terminal because of antiunion bias and without giving prior notice and opportunity to the Union to bargain concerning closure they violated Section 8(a)(1) and (5) of the Act.

6. When the Respondents laid off John Melton, Robert Scott Bell, and Garry Murdock Sr., and closed the maintenance operation/safety lane at the Roanoke terminal they violated Section 8(a)(1) and (3) of the Act.

7. The unfair labor practices of the joint employers described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondents, Central Transport, Inc. and Central Cartage Company, Sterling Heights, Michigan, and Big John, Inc., Kokomo, Indiana, joint employers, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees with regard to their union activity or the union activity of others.

(b) Threatening employees with plant closure if they select a union to represent them.

(c) Closing any of its facilities or laying off employees because of antiunion bias.

(d) Failing to bargain in good faith with the Union.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore matters to the status quo ante by reopening the maintenance operation/safety lane at the Roanoke terminal which was closed on September 1, 1989.

(b) Offer John Melton, Robert Scott Bell, and Garry Murdock, Sr., full reinstatement to their former positions or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges.

(c) Make John Melton, Robert Scott Bell, and Garry Murdock, Sr. whole for any loss of pay and other benefits suffered by them commencing from September 1, 1989, the date of their unlawful layoff. Backpay to computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) On request, bargain in good faith concerning wages, hours, and other terms to conditions of employment with the Union.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Roanoke, Indiana, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing, within 20 days from the date of this Order what steps the Respondent has taken to comply therewith.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''